



3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Robert M. Charles Jr. NV State Bar No. 006593  
Email: [rcharles@lrlaw.com](mailto:rcharles@lrlaw.com)  
John C. Hinderaker AZ State Bar No. 018024  
Email: [jhinderaker@lrlaw.com](mailto:jhinderaker@lrlaw.com)

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

CHAPTER 11

**OBJECTION OF USACM  
LIQUIDATING TRUST TO PROOF  
OF CLAIM NO. 10725-00676-1 IN  
THE AMOUNT OF \$50,000 BY  
MARCIA J. KNOX TRUST; AND  
CERTIFICATE OF SERVICE**

Date of Hearing: October 18, 2011  
Time of Hearing: 1:30 p.m.

The USACM Liquidating Trust (the “USACM Trust”) recently discovered that approximately 140 proofs of claim (“POC’s”) or portions of proofs of claim had not been properly entered into the database of Sierra Consulting Group, LLC (“Sierra”) and, therefore, had not been included in the loan by loan objections filed by the USACM Trust. The POC’s discovered by Sierra contain claims that relate to investments in loans that the USACM Trust has already processed on a loan by loan basis. Accordingly, where appropriate the USACM Trust is objecting to these remaining POC’s on a claim by claim basis.

Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the USACM Trust requests an order disallowing in full Proof of Claim No. 10725-00676-1 (the “Subject Proof of Claim”) by Marcia J. Knox Trust (“Knox

Trust”) against USA Commercial Mortgage Company (“USACM”) in the amount of \$50,000.<sup>1</sup>

Here, the Subject Proof of Claim is based upon a \$50,000 investment in the Anchor B Loan. The USACM Trust has filed omnibus objections to the claims arising out of investments in the Anchor B Loan. In association with the Anchor B omnibus objections, on April 20, 2011, the USACM Trust filed the Declaration of Geoffrey L. Berman in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the Anchor B Loan (“Berman Decl.”) [DE 8326].<sup>2</sup> A Copy of the Berman Decl. will be served on the Knox Trust with this Objection. To avoid confusion, the hearing date shown on the declaration will be redacted and “Exhibit A” to the Berman Decl. will be omitted.<sup>3</sup>

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. BACKGROUND FACTS**

#### **a. The USACM Bankruptcy**

On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtor’s post-petition management of the Debtor was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC, who served as the Chief Restructuring Officer.

USACM was a Nevada corporation that, prior to the Petition Date, was in the business of underwriting, originating, brokering, funding and servicing commercial loans

<sup>1</sup> In compliance with Nevada LR 3007, a copy of the first page of the Subject Proof of Claim is attached as **Exhibit A**

<sup>2</sup> The USACM Trust filed the Berman Decl. in support of the Anchor B omnibus objections. The Court heard those omnibus objections and sustained them at the omnibus hearing on June 4, 2011.

<sup>3</sup> Exhibit A lists the Direct Lenders whose claims were affected by the Anchor B omnibus objections. Those Direct Lender claims have no relevance to this objection and therefore Exhibit A to the Berman Decl. will not be provided to the Knox Trust.

1 primarily secured by real estate, both on behalf of investors and for its own account. That  
2 business included the solicitation of investors to purchase fractional interest in loans that  
3 USACM originated and then serviced. These investors are referred to as “Direct Lenders”  
4 in USACM’s bankruptcy case and in this Objection.

5 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third  
6 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.  
7 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this  
8 Court, USACM sold the servicing rights to most of the loans it serviced to Compass  
9 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Anchor  
10 B Loan. The sale to Compass closed on February 16, 2007.

11 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,  
12 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the  
13 successor to USACM with respect to standing to seek allowance and disallowance of  
14 Claims under 11 U.S.C. § 502(a).

15 Upon information derived from filings in the United States District Court, District  
16 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*  
17 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP  
18 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan  
19 service agreements in the USACM bankruptcy case and took a secured interest in those  
20 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase  
21 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of  
22 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

23 Further, from filings in the same action, the Trust believes that “Effective as of  
24 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset  
25 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset  
26 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase

1 Agreement to Asset Resolution, and Asset Resolution foreclosed on the assets of  
2 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is  
3 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-  
4 RCJ, along with certain affiliates.<sup>4</sup> William A. Leonard, Jr. was appointed trustee in the  
5 Asset Resolution case.

6 The Trust has attempted to monitor loan collections through monitoring the district  
7 court litigation and the ARC bankruptcy case, but has received limited information  
8 concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or  
9 their successors, including the trustee in bankruptcy for Asset Resolution. The Trust has  
10 also been in contract with Cross FLC about certain loans that it is servicing, but Cross  
11 FLC is not servicing the Anchor B Loan.<sup>5</sup> Upon review of the county records, however,  
12 counsel for the Trustee has determined that the property securing the loan was sold at a  
13 February 5, 2008 trustee’s sale, with CFP Anchor B SPE LLC, a Compass designated  
14 special purpose entity, taking title with a winning \$4,504,000 credit bid placed on behalf  
15 of Compass and the Direct Lenders. The property was later sold to another entity on  
16 October 2, 2009.

17 **b. The Anchor B Loan**

18 USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding  
19 for an acquisition and development loan to a borrower identified as “Anchor B, LLC.” A  
20 copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference.  
21 (Berman Decl., ¶ 4.) The total loan amount proposed was \$5,850,000. The Offer Sheet

22 \_\_\_\_\_  
23 <sup>4</sup> 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP  
24 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,  
Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP  
Anchor B SPE LLC, and Shamrock SPE LLC.

25 <sup>5</sup> By Order entered on July 19, 2010 by the Hon. Robert C. Jones in United States Bankruptcy Court (Case  
26 No. BK-S-09-32824-RCJ), the servicing rights for 19 loans were transferred to Cross, FLS. The Anchor B  
Loan, however, was not among the loans whose servicing rights were transferred to Cross, FLS.

1 described the investment as a “First Trust Deed Investment” and noted that the investment  
2 would be secured by a first deed of trust on approximately 9.9 acres located in Houston,  
3 Texas, on the northwest corner of Bellaire Boulevard and Southwest Freeway, improved  
4 with an approximately 180,000 square foot big-box retail building on it. The loan was  
5 intended to acquire the property and cover the cost associated with refurbishing the big-  
6 box store.

7 On May 31, 2005, Borrower made and delivered to various lenders a “Promissory  
8 Note Secured by Deed of Trust” (the “Note”) and a Construction Loan Agreement  
9 (Berman Decl., ¶ 5.) The Note and Loan Agreement provided for a loan in the initial  
10 principal amount of \$5,850,000. The Note was secured by a “Deed of Trust, Assignment  
11 of Rents, Security Agreement and Fixture Filing” (“Deed of Trust”) that was recorded in  
12 the official records of Harris County, Texas on June 6, 2005. The Note was also secured  
13 by a May 31, 2005 Unconditional Guaranty by Tracy Suttles, as well as a UCC-1  
14 Financing Statement covering Borrower’s personal property, tangible and intangible,  
15 recorded on June 9, 2005. (Berman Decl., ¶ 5.)

16 The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows  
17 that Borrower was “Non-performing” on the Note as of July 31, 2006. (Berman Decl., ¶  
18 6.) The USACM “Loan Summary” dated February 28, 2007 and filed in this case shows  
19 that Borrower was in “Maturity and Interest Default” as of February 28, 2007. (Berman  
20 Decl., ¶ 6.) As stated above, counsel for the Trustee has determined that the collateral was  
21 foreclosed on and then sold.

22 During this bankruptcy case through the transfer of servicing to Compass, USACM  
23 treated the Direct Lenders with respect to any interim payments by the borrower in  
24 accordance with this Court’s orders and the confirmed Plan. The USACM Trust has not  
25 been able to determine the ultimate disposition of the Anchor B Loan, the collateral  
26

1 securing that loan or whether the Direct Lenders were repaid in whole or in part. (Berman  
 2 Decl., ¶ 7.)

## 3 **II. JURISDICTION**

4 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
 5 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
 6 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

7 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
 8 Bankruptcy Rule 3007.

## 9 **III. APPLICABLE AUTHORITY**

10 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
 11 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
 12 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
 13 shall allow the Claim except to the extent that the Claim is “unenforceable against the  
 14 debtor . . . under any . . . applicable law for a reason other than because such claim is  
 15 contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is  
 16 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof  
 17 of claim controverts the presumption, the creditor ultimately bears the burden of  
 18 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
 19 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
 20 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).

## 21 **IV. OBJECTION**

22 The Anchor B Loan appears to have been a legitimate, arms-length transaction. In  
 23 addition, the Direct Lenders took an obvious risk by investing in a promissory note  
 24 secured by a lien on real property.

25 USACM is not liable to the Knox Trust for the Borrower’s default or any decrease  
 26 in the value of the collateral.

The Knox Trust fails to state a claim because USACM does not appear to have breached the loan servicing agreements with respect to collection of the Anchor B Loan.

This objection will not affect the Knox Trust's right to be repaid on the Anchor B Loan by the Borrower or to recover from the sale of any collateral that secured the Anchor B Loan.

## V. CONCLUSION

The USACM Trust respectfully requests that the Court disallow the Subject Proof of Claim in full because it is based upon an investment in the Anchor B Loan. The USACM Trust also requests such other and further relief as is just and proper.

DATED this 17th day of September, 2011.

LEWIS AND ROCA LLP

By /s/ John Hinderaker (#18024)  
Robert M. Charles Jr. NV 6593  
John C. Hinderaker, AZ 18024 (*pro hac vice*)  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Telephone: (702) 949-8200  
Facsimile: (702) 949-8398  
E-mail: [jhinderaker@lrlaw.com](mailto:jhinderaker@lrlaw.com)

*Attorneys for the USACM Liquidating Trust*

Copy of the foregoing and the Berman Decl. [DE 8326]  
with the hearing date shown there redacted and  
Exhibit A to the declaration omitted  
was mailed by first class postage prepaid on  
September 17, 2011 to:

Marcia J Knox Living Trust Dated 8/16/04  
C/O Marcia J Knox Trustee  
1885 Vintners Pl  
Reno, NV 89519-8334

LEWIS AND ROCA LLP

/s/ Renee L. Creswell

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

Renee L. Creswell

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